SEGAR RESTU (M) SDN. BHD.

v.

WONG KAI CHUAN & ANOR.

HIGH COURT MALAYA, TAIPING
DATO' HJ. ABDUL MALIK B. HJ ISHAK J.
[CIVIL SUIT NO. 22-7 OF 1993 (T)]
6 SEPTEMBER 1994

PRACTICE & PROCEDURE: Summary judgment - Order 14 RHC 1980 - Claim for trespassing into land belonging to plaintiff - Jurisdiction of Court where issues are clear - Definition of trespass in law - Injunctive order given against 1st defendant in previous proceedings - Contempt proceedings against 1st defendant who violated the injunctive order - Whether Court entitled to consider the injunctive order and the contempt proceedings in deciding the plaintiff's application for summary judgment.

This was an application by the plaintiffs for summary judgment against the defendants in respect of a piece of land. The plaintiffs claimed that the defendants had trespassed and built a bungalow, a factory, planted 56 durian trees, fenced up the area and bolted it on their land. Consequently, the plaintiff sought damages and costs.

Held:

[1] Under the law, the plaintiff is entitled to apply straight to the Judge for summary judgment without trial under O. 14 of the Rules of the High Court 1980. The Judge is equally empowered and has the jurisdiction to enter and order summary judgment where the facts warrant it or where the case is virtually uncontested or uncontestable or where the issues are clear.

[2] Order 14 of the Rules of the High Court 1980 was intended to put to an end to sham defences concocted for the sole purpose of delay and consequently, causing great loss to the plaintiffs who were endeavouring to enforce their rights under the law.

[3] From the pleadings and the affidavits filed the defendants have failed to satisfy the Court that there is a fair or reasonable probability of the defendants having a real *bona fide* defence. Accordingly, the plaintiff was entitled to summary judgment with costs.

[Summary judgment allowed. Damages to be assessed by Registrar].

Cases referred to:

Jacobs v. Booth's Distillery Co. [1901] 85 LT 262 ***(refd)***
Citibank N.A. v. Ooi Boon Leng & Ors. [1981] 1 MLJ 282 ***(refd)***
Shell-Mex and B.P. Ltd. v. Manchester Garages [1971] 1 All ER 841 ***(refd)***
Segar Restu (M) Sdn. Bhd. v. Wong Kai Chuan & Anor. [1993] 4 CLJ 177 ***(refd)***
Robert Addie & Sons (Collieries) Ltd. v. Dumbreck [1929] AC 358 ***(refd)***
Banque de Paris v. de Naray [1984] 1 Lloyd's Rep 23 ***(refd)***
Ooi York Choo v. Lim Song Foundry [1963] 29 MLJ 87 ***(refd)***
Janaki v. Cheok Chuan Seng [1973] 2 MLJ 96 ***(refd)***
Zainal Abidin bin Sulaiman & 26 Ors. v. Hoya Holdings Sdn. Bhd. [1993] 2 AMR 31 ***(refd)***

Legislation referred to:

Rules of the High Court 1980, O. 14

For the plaintiff - A. Selvanathan; M/s. Kean Chye & Sivalingam
For defendants - Gurbachan Singh; M/s. Bachan & Kartar

JUDGMENT

Hj. Abdul Malik b. Hj. Ishak J:

This is an application by the plaintiff by way of summons-in-chambers (enclosure 7) supported by the affidavit of Sanglidevan a/l Sinnathamby (enclosure 7A) for summary judgment against the defendants in regard to a piece of land comprised in H.S. (D) L.M. 4277-4311, P.T. 2053-2007 (previously known as EMR 1133, Lot 76), Mukim Sungai Tinggi, in the district of Larut and Matang (hereinafter referred to as "Lot 76"). It was the plaintiff's case all along that Lot 76 belonged to them whilst the defendants were the owners of Lot 78. It was also the plaintiff's case that the defendants had trespassed and built a bungalow, a factory, planted 56 durain trees, fenced up the area and bolted it, on Lot 76 and, consequently, the plaintiff also sought damages and costs.

Under the law, the plaintiff is entitled to apply straight to the Judge for summary judgment without trial under O. 14 of the Rules of the High Court 1980 ("RHC") and the Judge is equally empowered and has the jurisdiction to enter and order summary judgment where the facts warrant it or where the case is virtually uncontested or uncontestable or where the issues are clear. It is pertinent to point out that O. 14 of the RHC was intended to put an end to sham defences concocted for the sole purpose of delay and, consequently, causing great loss to the plaintiffs who were endeavouring to enforce their rights under the law (*Jacobs v. Booth's Distillery Co.* [1901] 85 LT 262 HL, *Citibank N.A. v. Ooi Boon Leng & Ors.* [1981] 1 MLJ 282 FC & *Shell-Mex and B.P. Ltd. v. Manchester Garages* [1971] 1 All ER 841).

In their statements of defence and counterclaim, the defendants stated that their Architect had put up the relevant plans for the construction of the buildings and the said Architect had identified the land to be at Lot 76; these plans were then submitted to the Majlis Perbandaran Taiping ("MPT") for approvals after obtaining the views of the relevant government agencies like the Jabatan Kerja Raya, Jabatan Pengairan dan Saliran and the Jabatan Kesihatan. Finally, it was stated that the MPT had approved the plans and had issued the certificates for occupation. Unfortunately, no exhibits were annexed by the defendants in their affidavit-in-reply (enclosure 10A) to support their version as set out in the statements of defence and counterclaim. The affidavit-in-reply (enclosure 10A) presents a golden opportunity to nail down the plaintiff's application for summary judgment. But alas, it spoke of precious little. On the other hand, the plaintiff in their affidavit-in-reply (enclosure 11) rebutted that part of the defendant's affidavit-in-reply (enclosure 10A) in regard to, firstly, the purported MPT's approval of the building plans submitted by the defendants and, secondly, the purported issuance of the certificates of occupation by the MPT. The plaintiff averred in their affidavit-in-reply (enclosure 11) that it was not the Architect but rather the Pelukis Pelan Bangunan Berdaftar that drew the defendants' plans. To back up their allegation, a letter dated 20 April 1993 from Choy Kee Foong, the Pelukis Pelan Bangunan Berdaftar was exhibited. That letter addressed to the plaintiff reads as follows and it contains startling facts adverse to the defendants:

> **Per: Maklumat tentang bangunan haram di atas Lot 76 Titi Temerlok, Mukim Sungai Tinggi Perak Darul Ridzuan, Guaman No: 22-7-1993 (T), Mahkamah Tinggi, Taiping**
>
> Merujuk kepada surat tuan bertarikh 20 April 1993, berkenaan dengan perkara di atas bagi Para
>
> (a) Jurukur tidak dilantik oleh tuan tanah bagi mengukur tanah tersebut.

(b) Pengesahan Lot 76 telah ditunjukkan oleh Encik Wong Kai Chuan pemilik Lot 78.

(c) Bangunan yang berada di atas Lot 76 tidak mempunyai sijil kelayakan menduduki yang sah dan saya hanya menjadi sebagai juru pelan ke atas Lot 78 yang tanahnya kosong buat masa ini.

Kerjasama tuan dalam perkara ini amat dihargai tinggi.

Sekian, terima kasih.

Yang benar,

(tandatangan)
Choy Kee Foong

This letter shows that the defendants did not employ a qualified surveyor to survey the land before putting up the bungalow and the factory; it was the first defendant that pinpoints Lot 76 to the Pelukis Pelan Bangunan Berdaftar; and that the buildings on Lot 76 were without valid certificates of occupation.

Even the MPT in a letter dated 13 February 1993 addressed to the plaintiff and marked as exhibit "S12" in support of the affidavit of Sanglidevan a/l Sinnathamby (enclosure 7A) denied approving the plan for Lot 76 but rather the approval was meant for Lot 78. In another letter dated 22 December 1992, the MPT drew Choy Kee Foong's attention (see exhibit "S12" in enclosure 7A) to the cancellation of the Sijil Kelayakan Menduduki as there were no buildings erected on Lot 78 as proposed and that the MPT considered that the development on Lot 76 as unlawful and that legal action would be taken accordingly. This was not a mere threat uttered by the MPT. The MPT meant business and by letter dated 23 December 1992, the President of the MPT sent a notice of demolition of the buildings on Lot 76 to the plaintiff with copies thereof to the defendants (see exhibit 'S6' of enclosure 1B). I am constrained to say that the defendants' affidavit-in-reply (enclosure 10A) which exhibited the statements of defence and counterclaim (exhibit 'A') was not only a blatant exaggeration but also untrue.

Adopting a different stance, Counsel for the defendants clutching at straws argued that the word "trespass" was never used by the plaintiff in their statement of claim. This meant that the plaintiff was converting the pleadings from one nature to that of another or from one cause of action to that of another. The plaintiff's Counsel rebutted this and pointed out that the issue of trespass had been ventilated in an earlier judgment of this Court (see *Segar Restu (M) Sdn. Bhd. v. Wong Kai Chuan & Anor.* [1993] 4 CLJ 177); that the word trespass was specifically mentioned in paragraph 6 of the statement of claim (enclosure 1D); and that there was an application for an injunction to restrain the defendants from entering Lot 76 as prayed for in paragraph 13(d) of the statement of claim (enclosure 1D). The Court order dated 5 March 1993 clearly restrained the defendants by their servants or agents or otherwise from entering or trespassing upon Lot 76 and to argue that the issue of trespass was never ventilated by the plaintiff in their statement of claim was indeed mischievous and an exercise in misrepresentation of the factual scenario of the whole case. In paragraph 5 of the statements of defence and counterclaim, the defendants admitted trespassing into Lot 76 since 1987.

Reading the pleadings, one would be able to detect the element of trespass. Who is a trespasser? In law, a trespasser is one who wrongfully enters on land in the possession of another, and has neither right nor permission to be on the land. Lord Dunedin in *Robert Addie & Sons (Collieries) Ltd. v. Dumbreck* [1929] AC 358, 371 aptly described

a trespasser as one "who goes on the land without invitation of any sort and whose presence is either unknown to the proprietor or, if known, is practically objected to." That would be a fitting description of the defendants.

In considering the plaintiff's application for summary judgment under O. 14 of the RHC, I am entitled to consider the injunctive order dated 5 March 1993 and the contempt proceedings which culminated in the Court order dated 29 July 1993 wherein the first defendant, who was found to have violated the injunctive order dated 5 March 1993, was cautioned and discharged.

The whole case revolves on trespass. It is a sheer waste of judicial time to proceed for trial as the whole issue can easily be resolved at this juncture. The defendants' Counsel argued that the real issue could only be crystallized during the trial proper and, consequently, the application for summary judgment should be dismissed with costs. I beg to disagree. From the pleadings and the affidavits filed therein, one would not only be able to see the wood from the trees but also see the moon in the darkness of the night. It would be an exercise in futility and sheer wastage of judicial time to go for trial. I have looked at the whole situation and have asked myself time and again this vital question: Whether the defendants have satisfied this Court that there is a fair or reasonable probability of the defendants having a real or *bona fide* defence? (see *Banque de Paris v. de Naray* [1984] 1 Lloyd's Rep 23). Unfortunately, the answer is in the negative. I accordingly make an order that the plaintiff is entitled to summary judgment with costs.

General and Special Damages

The plaintiff sought for these two damages and they were set out in enclosure 7. The special damages itemised in paragraph 6 of enclosure 7A were:

(a) Kos tanah	... ...	RM210,000.00
(b) Penukaran dan pecah lot		
(i) premium penukaran	...	RM 15,720.40
(ii) yuran jurukur	...	RM 9,135.00
(c) Yuran professional		
(i) yuran akitek	...	RM 8,000.00
(ii) yuran jurutera	...	RM 10,000.00
(d) Yuran pelan		
(i) yuran bangunan pelan	...	RM 3,312.00
(ii) yuran pelan R & D	...	RM 150.00
(e) Kos pentadbrian	...	RM 75,000.00
		RM331,317.40

At first blush, it seems that the plaintiff was turning his misfortune into a fortune. But the law is clear. The plaintiff, in trespass, is entitled even though he has sustained no actual loss, to recover damages. Thus, where the defendants used the plaintiff's land as a means of access to his accretion land owned under a licence without the plaintiff's permission, exemplary damages was awarded to the plaintiff (*Ooi York Choo v. Lim Song Foundry* [1963] 29 MLJ 87 and *Janaki v. Cheok Chuan Seng* [1973] 2 MLJ 96). The

plaintiff should not throw these figures at the Court and pray for an order in terms. They must specifically prove them (*Zainal Abidin bin Sulaiman & 26 Ors. v. Hoya Holdings Sdn. Bhd.* [1993] 2 AMR 31 : 1376). In the event, in regard to these damages, the proper order would be for the Senior Assistant Registrar to assess them. I accordingly make an order to that effect. The Senior Assistant Registrar should proceed to assess damages on 21 September 1994.